

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:CTR:HAR:TL-N-891-99
EFAlair

date: **FEB 16 1999**

to: Chief, Examination Division, Connecticut-Rhode Island District
Attn: [REDACTED] Case Manager
[REDACTED], Team Coordinator
Group 1110, Norwalk, CT

from: District Counsel, Connecticut-Rhode Island

subject: [REDACTED]

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This responds to your request for advice concerning whether the Service should execute a Consent to Extend the Time to Assess Tax (Form 872), which extends the [REDACTED] statute of limitations for [REDACTED] Foreign Sales Corporation's (FSC) [REDACTED] year to [REDACTED]. Based on the facts set forth herein, we conclude that the Service should execute the Form 872.
UIL No.: 6501.00-00

FACTS:

The Service is currently examining [REDACTED]'s [REDACTED] year under its Coordinated Examination Program. FSC's [REDACTED] return was previously surveyed. For [REDACTED]'s [REDACTED] year, the statute of limitations expires on [REDACTED]. For FSC's [REDACTED] year, however, the statute of limitations expires on [REDACTED].

On [REDACTED], the Service received an unsolicited Form 872 for FSC's [REDACTED] year. The Form 872 extends the statute of limitations from [REDACTED] to [REDACTED]. The

purpose of the extension to allow FSC time to file an accurate amended return. [REDACTED] will then prepare a claim for a correlative adjustment.

Currently, [REDACTED]'s outside accountants are reviewing [REDACTED]'s records to ascertain if [REDACTED], as a related supplier, and FSC should file amended returns to change their intercompany pricing method to a "transaction by transaction" method, which is permissible. It is anticipated that this change will increase FSC's tax but will give [REDACTED] a refund. The overall effect is a net refund.

LAW AND ARGUMENT:

Extension of the statute of limitations is permitted under I.R.C. § 6501(c)(4), when both the Service and the taxpayer consent to the extension in writing. Thus, the Service's execution of the Form 872 is expressly authorized.

The Service, however, is limited by its policies. Execution of unsolicited extension requests is addressed in IRM § 4541.6(2), which provides:

Chiefs, Examination Division (District Directors in Streamlined Districts) will carefully consider whether the circumstances in a case require that the statutory period of limitations upon assessment be extended before accepting a consent extending the statutory period of limitations upon assessment. A consent, the sole purpose of which is to extend the period for filing claims for refund, should not be accepted unless the Chiefs, Examination Division (District Directors in Streamlined Districts) authorizes the acceptance of consents in such a case or class of cases.

In this case, FSC seeks to increase the amount reported, but [REDACTED] will receive a refund, resulting in a net amount refunded. Thus, the purpose for the consent is not solely to file a claim for refund. Further, the Service's execution of the extension will assist FSC and [REDACTED] in filing accurate amended returns, which is in the Service's best interest. Therefore, we recommend that the Service execute the Form 872.

CONCLUSION:

The Service should execute the Form 872 after receiving final written notification from this office. We will provide final written notification, after our National Office reviews this opinion, within 10 days following the date of issuance.

This opinion is based upon the facts set forth herein. Should you determine that they are different, you should not rely upon this opinion without conferring with this office, as our opinion might change. Further, as noted, this opinion is subject to our National Office's ten day post-review procedure, which may result in modifications to the conclusions herein.

If you have any questions, please contact Attorney Elise F. Alair at (860) 290-4090.

(Signed) Gerald A. Thorpe

GERALD A. THORPE
District Counsel